State Water Resources Control Board

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DATE: March 14, 2012

SUBJECT: **CITY OF SACRAMENTO AND SYLVIA DELLAR SURVIVOR'S TRUST DELLAR LANDFILL ECONOMIC BENEFIT OF NONCOMPLIANCE, ACL COMPLAINT NO. R5-2012-XXXX**

This memo is in response to your request of March 1, 2012 for a determination of City of Sacramento and Sylvia Dellar Survivor's Trust Dellar Landfill (Dellar) economic benefit resulting from the discharger's violation of the provisions of Cleanup and Abatement Order R5-2008-0705. This memo analyzes the economic benefit realized by Dellar by: (1) failure to submit two erosion control plans; (2) not initiating the closure construction for the site; and (3) the failure to submit a closure certification report. The results of this analysis are to be used to determine the minimum amount of the assessed liability in ACL Complaint No. R5-2012-0516 pursuant to California Water Code sections 13350 and 13267 which authorize the imposition of administrative civil liability, and CWC section 13323, which authorizes the Executive Officer to issue a complaint.

The Porter-Cologne Act requires that certain civil liabilities be set at a level that accounts for any "economic benefit or savings" violators gained through their violations. To establish the amount of civil liabilities, the Office of Enforcement uses a "Penalty Calculation Methodology" that addresses the economic benefit of noncompliance.[1]

The U.S. Environmental Protection Agency developed the BEN computer model to calculate the economic benefit a discharger derives from delaying and/or avoiding compliance with environmental regulations.[2] The BEN model was used in calculating the economic benefit derived by the two parties of not complying with existing environmental regulations and requirements. The economic benefit of noncompliance is estimated to be $135,367. The next

[1] Water Quality Enforcement Policy, Office of Enforcement, State Water Resources Control Board, November 17, 2009, Page 9-21.

[2] BEN Version 4.6.0 was developed under the direction of Jonathan Libber, BEN/ABEL Coordinator, Office of Enforcement and Compliance Assurance, U.S. EPA. Technical assistance provided to EPA by Industrial Economics, Incorporated (IEc), Cambridge, MA.

section describes the structure of the BEN model and details the procedures used in calculating the estimate.

Economic Benefit Overview

Economic benefit represents the financial gains that a violator accrues by delaying and/or avoiding expenditures to meet mandated pollution control requirements. Funds not spent on environmental compliance are available for other profit-making activities or, alternatively, a defendant avoids the costs associated with obtaining additional funds for environmental compliance. Economic benefit represents the amount by which a defendant is financially better off from not having complied with environmental requirements in the specified timeframe. The appropriate economic benefit calculation should represent the amount of money that would make the violator indifferent between compliance and noncompliance. If the civil penalty does not recover at least this economic benefit, then the violator will retain an economic gain and have no financial incentive to comply. Because of the precedent of this retained gain, other regulated companies may see an economic advantage in similar noncompliance, and the penalty will fail to deter potential violators. Economic benefit does not represent compensation to the enforcement agency as in a typical "damages" calculation for a tort case, but instead is the minimum amount by which the violator must be penalized so as to return it to the financial position it would have been in had it complied on time.

BEN Model Methodology (and Factors Specific to the Dellar Case)

The economic benefit calculation must incorporate the economic concept of the "time value of money." Stated simply, a dollar today is worth more than a dollar tomorrow, because you can invest today's dollar to start earning a return immediately. Thus, the further in the future the dollar is, the less it is worth in "present-value" terms. Similarly, the greater the time value of money (i.e., the greater the "discount" or "compound" rate used to derive the present value), the lower the present value of future costs.

To calculate a violator's economic benefit, BEN uses standard financial cash flow and net present value analysis techniques, based on modern and generally accepted financial principles. First, BEN calculates the costs of complying on-time and of complying late, adjusted for inflation (price adjusted), depreciation, and tax deductibility. To compare the on-time and delayed compliance costs in a common measure, BEN calculates the present value of both streams of costs, or "cash flows," as of the date of initial noncompliance. BEN derives these values by discounting the annual cash flows at an average cost of capital throughout this time period.

BEN then subtracts the delayed-case present value from the on-time-case present value to determine the initial economic benefit as of the noncompliance date. Finally, BEN compounds this initial economic benefit forward to the penalty payment date at the same cost of capital to determine the final economic benefit of noncompliance. The BEN model focuses exclusively on the economic benefit from delayed and/or avoided costs (its analysis encompasses only the cost differential between compliance and noncompliance). BEN, thereby, employs a simplifying assumption that the finances of a violator's compliant and noncompliant conditions are identical but for the compliance cost differential.

Pollution control expenditures can include: (1) capital investments (e.g., pollution control equipment); (2) one-time nondepreciable expenditures (e.g., setting up a reporting system, or acquiring land); and (3) annually-recurring costs (e.g., operating and maintenance costs, or groundwater monitoring costs). Each of these expenditures can be either delayed or avoided. BEN's baseline assumption is that capital investments and one-time nondepreciable

expenditures are merely delayed over the period of noncompliance, whereas annual costs are avoided entirely over this period. BEN does allow, however, analysis of any combination of delayed and avoided expenditures.

BEN calculates the violator's discount/compound rate based on entity type and financial information from the date of noncompliance to the penalty payment date. As noted above, the discount/compound rate quantifies the time value of money. BEN discounts and compounds all cash flows at the cost of capital, averaged over the time period from the noncompliance date to the compliance or penalty payment date, whichever is later. To calculate an average discount/compound rate for a trust, BEN uses the cost of debt for a privately owned entity.

BEN derives a violator's economic benefit in several steps. First, BEN price adjusts compliance costs from the cost estimate date to the date when they would have been expended had the violator complied on time (on-time scenario) and to the date when they will be expended as the violator comes into compliance (delay scenario). Next, BEN uses these costs to compute the total cost of complying on-time and of complying late, adjusted for inflation, depreciation, and taxes. BEN also calculates the present value of both scenarios as of the date of initial noncompliance, so that they can be compared in a common metric. Then, BEN subtracts the delayed scenario present value from the on-time scenario present value to determine the initial economic benefit as of the noncompliance date. Finally, BEN compounds[3] this initial economic benefit forward to the penalty payment date.

All costs must be price adjusted to the date of noncompliance using an inflation index. Inflation indices are more precise than an annual inflation rate, but they require an index value for every relevant month. Therefore, BEN contains a database of monthly index values for several price indices from 1987 to 2029. Annual updates keep indices current and add future values. For projected future inflation, BEN extrapolates each cost index forward in time at a forecasted rate, based upon projections from industry groups and government agencies.

Three separate BEN analyses were conducted for the Dellar case to determine the total benefit of noncompliance since different dates of noncompliance and types of expenditures are involved. The first is the failure to submit erosion control plans, the second is failure to initiate the closure construction and the third is the failure to submit the closure certification report. Data input and results for each BEN analysis are attached to this memo.

Delayed Erosion Control Plans

This type of expenditure is characterized in BEN as a one-time nondepreciable expenditure. The 2009 Erosion Control Plan was due on 15 September 2009 and has not been received. For purposes of this assessment, it was assumed that it will be "received" on 10/30/2012, after the landfill should be closed.[4] Similarly, the 2010 Erosion Control Plan was due on 15 September 2010 and for purposes of the assessment it is assumed that it will be "received" on 10/30/2012. The cost of the plans was estimated at $7,000 each on 3/1/2012. The penalty payment date in the ACL Complaint is 4/9/2012.

The first step is to price adjust the total cost of the reports ($14,000) from the date of the cost estimate (3/1/2012) to the noncompliance date, 9/15/2009. The plans must be produced by salaried professionals therefore the Employment Cost Index (ECI) was used to price adjust

[3] Compounding is the process of adding earned interest to the principal so that, from that moment on, the interest that has been added also earns interest. The alternative is simple interest where interest is not added to the principal. The use of compounding interest is standard practice in finance and economics.

[4] All factual data for this case was received from Wendy Wyels, in a personal communication, 3/1/2012.

costs to the date of noncompliance.[5] This value is $13,430. The expenditure is assumed to be tax deductible by the discharger. Adjusting for federal taxes of 35% and state taxes of 5.7%, this value becomes $7,958.

Next the capital cost of delaying compliance is calculated by price adjusting the $14,000 compliance cost to the date of compliance (10/30/2012), the expected date of submitting the plans. This value is $14,126. Adjusting for taxes reduces this amount to $8,370. The cost of delayed compliance is then calculated by discounting $8,370 to the noncompliance date of 9/15/2009. This value is $6,735 (in 9/15/2009 dollars). The average discount/compound rate for trusts is 7.2% based on average after-tax debt costs and equity costs beginning on the noncompliance date of 9/15/2009 and ending on the compliance date of 10/30/2012.

The initial economic benefit of noncompliance is then calculated by subtracting the delayed compliance cost ($6,735) from the on-time construction cost ($7,958). This value is $1,223 (in 9/15/2009 dollars). The final economic benefit of noncompliance is then calculated by compounding the initial economic benefit to the payment penalty date (4/9/2012) which is $1,462.

Delayed Closure Construction

This type of expenditure is classified in BEN as a one-time nondepreciable expenditure. The Cleanup and Abatement Order required that the parties submit a report by 15 December 2010 certifying that the landfill was closed in 2010. It is assumed that closure activities would be completed by the end of the 2010 construction season, or 10/30/2010. However, the project will not be delayed to at least 10/30/2012. The cost of the closure was estimated at $2,000,000 on 3/1/2012. The penalty payment date for the closure violation is also 4/9/2012.

The first step is to price adjust the total cost of the closure ($2,000,000) from the date of the cost estimate (3/1/2012) to the noncompliance date, 10/30/2010. The closure is a construction activity therefore the Construction Cost Index (CCI) was used to price adjust costs to the date of noncompliance.[6] This value is $1,958,669. The expenditure is assumed to be tax deductible by the discharger. Adjusting for federal taxes of 35% and state taxes of 5.7%, this value becomes $1,160,590.

Next the capital cost of delaying compliance is calculated by price adjusting the $2,000,000 compliance cost to the date of compliance (10/30/2012), the expected date of completing the closure. This value is $2,018,025. Adjusting for taxes reduces this amount to $1,195,761. The cost of delayed compliance is then calculated by discounting $1,195,761 to the noncompliance date of 9/15/2009. This value is $1,040,332 (in 9/15/2009 dollars).

The initial economic benefit of noncompliance is then calculated by subtracting the delayed compliance cost ($1,040,332) from the on-time construction cost ($1,160,590). This value is $120,258 (in 10/30/2010 dollars). The final economic benefit of noncompliance is then calculated by compounding the initial economic benefit to the payment penalty date (4/9/2012) which is $132,957.

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[5]The Employment Cost Index (ECI) measures the change in the cost of labor, free from the influence of employment shifts among occupations and industries. Detailed information on survey concepts, coverage, and methods can be found in Bureau of Labor Statistics Handbook of Methods, Chapter 8, "National Compensation Measures," Bureau of Labor Statistics, on the Internet at www.bls.gov/opub/hom/pdf/homch8.pdf.

[6] Engineering News Record (ENR) publishes both a Construction Cost Index and Building Cost index that are widely used in the construction industry (.http://enr.construction.com/economics/) This website contains an explanation of the indices methodology and a complete history of the 20-city national average for the CCI and BCI.

Closure Certification Report

This type of expenditure is classified in BEN as a one-time nondepreciable expenditure. Submission of the Closure Certification Report, due on 12/15/2010, would be delayed to at least 10/30/2012. The cost of the report was estimated at $15,000 on 3/1/2012. The penalty payment date is 4/9/2012.

The first step is to price adjust the total cost of the report ($15,000) from the date of the cost estimate (3/1/2012) to the noncompliance date, 12/15/2010. The report is produced by salaried professionals therefore the Employment Cost Index (ECI) was used to price adjust costs to the date of noncompliance. This value is $14,743. The expenditure is assumed to be tax deductible by the discharger. Adjusting for federal taxes of 35% and state taxes of 5.7%, this value becomes $8,736.

Next the capital cost of delaying compliance is calculated by price adjusting the $15,000 compliance cost to the date of compliance (10/30/2012), the expected date of submitting the report. This value is $15,135. Adjusting for taxes reduces this amount to $8,968. The cost of delayed compliance is then calculated by discounting $8,968 to the noncompliance date of 12/15/2010. This value is $7,871 (in 12/16/2010 dollars).

The initial economic benefit of noncompliance is then calculated by subtracting the delayed compliance cost ($7,871) from the on-time construction cost ($8,736). This value is $865 (in 12/15/2010 dollars). The final economic benefit of noncompliance is then calculated by compounding the initial economic benefit to the payment penalty date (4/9/2012) which is $948.

Summary

The following table summarizes the BEN analyses for the three compliance requirements. Although the dates of compliance, cost estimate and penalty payment are the same for the requirements, the date of noncompliance and the type of expenditures differ mandating three separate analyses.

Table. Compliance Requirements, BEN Analyses Data Input Values and Results

Compliance Requirement	Date of Non-Compliance	Compliance	Cost	Date of Cost Estimate	Penalty Payment Date	Economic Benefit of Noncompliance
Erosion Control Plans						
2009	9/15/2009	10/30/2012	$7,000	3/1/2012		
2010	9/15/2009	10/30/2012	$7,000	3/1/2012		
	Total		$14,000		4/9/2012	$1,462
Closure Construction	10/30/2010	10/30/2012	$2,000,000	3/1/2012	4/9/2012	$132,957
Closure Certification Report	12/15/2010	10/30/2012	$15,000	3/1/2012	4/9/2012	$948
		Grand Total				$135,367

The total economic benefit of noncompliance is the sum of the economic benefit of noncompliance for the three individual requirements which totals $135,367.

cc: Wendy Wyels, Central Valley Regional Water Quality Control Board
Gail Linck, Office of Research, Planning, and Performance
Attachment: BEN model results.

Erosion Control Plans
BEN Version 4.6.0 Input Data

Case Name	City of Sacramento and Sylvia Dellar Survivor's Trust Dellar Landfill
Run Name	Erosion Control Plans
Analyst Name	Gerald Horner
Cal EPA Region/Office	Region 5
Tax Status Federal Facility, which pay no taxes. Enter FF Not-for-Profit, which pays no taxes. Enter: NFP Municipality, which pays no taxes. Enter: muni C corporation. Enter: C Private business enity other than a C corporation. Enter type of business organization.	Trust
State	CA
Noncompliance Date (NCD) The date of the first violation.	9/15/2009
Compliance Date (CD) The date that the equipment will be functional and the discharger will be in	10/30/2012
Penalty Payment Date (PPD) The probable date the penalty will be paid.	4/9/2012
Average Discount/Compound Rate Reflects the average cost of borrowing funds over the period of analysis which is the date of noncompliance to the date of compliance or the penality payment date whichever is later.	7.2%
Capital Investment:	
Estimated Cost of Capital Equipment	$0
Cost Estimate Date The date the cost estimate was made. The date is used to deflate or inflate (price adjust) the cost to other dates.	3/1/2012
Cost Index for Inflation Alternative indices can be used to reflect the change in the cost of compliance due to inflation. Alternative cost indicies: Construction Cost (CCI); Employment Cost (ECI); Plant Cost (PCI); Producers Price (PPI); and Gross Domestic Product (GDP). A constant 2.5% inflation rate can also be specified (enter as text '2.5%).	CCI
Consider Future Replacement Enter Y if the capital improvement will depreciate and it will be replaced with similar equipment in the future. If the equipment can be periodically updated and remain functional, enter N.	N
Useful Life of Capital Equipment Specify the number of servicable years for the equipment being installed.	0
One-Time, Nondepreciable Expenditure:	
Estimated Cost	$14,000
Cost Estimate Date	3/1/2012
Cost Index for Inflation	ECI
Tax Deductible? If the expenditure is a deductible business expense under IRS rules, enter Y, otherwise N.	Y
Annually Recurring Costs:	
Estimated Annual Cost	$0
Cost Estimate Date	3/1/2012
Cost Index for Inflation	ECI

Erosion Control Plans (cont.)
BEN Version 4.6.0 Results

City of Sacramento and Sylvia Dellar Survivor's Trust Dellar Landfill	Erosion Control Plans
Present Values as of Noncompliance Date (NCD),	9/15/2009
A) On-Time Capital & One-Time Costs	$7,958
B) Delay Capital & One-Time Costs	$6,735
C) Avoided Annually Recurring Costs	$0
D) Initial Economic Benefit (A-B+C)	$1,223
E) Final Econ. Ben. at Penalty Payment Date,	
4/9/2012	**$1,462**
For-Profit (not C-Corp.) w/ CA tax rates	
Average Discount/Compound Rate	7.2%
Average Discount/Compound Rate Calculated By:	BEN
Compliance Date	10/30/2012
Capital Investment:	
Estimated Cost of Capital Equipment	$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Consider Future Replacement (Useful Life)	N/A (N/A)
One-Time, Nondepreciable Expenditure:	
Estimated Cost	$14,000
Cost Estimate Date	3/1/2012
Cost Index for Inflation	ECI
Tax Deductible?	Y
Annually Recurring Costs:	
Estimated Annual Cost	$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A

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Closure Construction
BEN Version 4.6.0 Input Data

Case Name	City of Sacramento and Sylvia Dellar Survivor's Trust Dellar Landfill
Run Name	Closure Construction
Analyst Name	Gerald Horner
Cal EPA Region/Office	Region 5
Tax Status Federal Facility, which pay no taxes. Enter FF Not-for-Profit, which pays no taxes. Enter: NFP Municipality, which pays no taxes. Enter: muni C corporation. Enter: C Private business enity other than a C corporation. Enter type of business organization.	Trust
State	CA
Noncompliance Date (NCD) The date of the first violation.	10/30/2010
Compliance Date (CD) The date that the equipment will be functional and the discharger will be in	10/30/2012
Penalty Payment Date (PPD) The probable date the penalty will be paid.	4/9/2012
Average Discount/Compound Rate Reflects the average cost of borrowing funds over the period of analysis which is the date of noncompliance to the date of compliance or the penality payment date whichever is later.	7.2%
Capital Investment:	
Estimated Cost of Capital Equipment	$0
Cost Estimate Date The date the cost estimate was made. The date is used to deflate or inflate (price adjust) the cost to other dates.	3/1/2012
Cost Index for Inflation Alternative indices can be used to reflect the change in the cost of compliance due to inflation. Alternative cost indicies: Construction Cost (CCI); Employment Cost (ECI); Plant Cost (PCI); Producers Price (PPI); and Gross Domestic Product (GDP). A constant 2.5% inflation rate can also be specified (enter as text "2.5%).	CCI
Consider Future Replacement Enter Y if the capital improvement will depreciate and it will be replaced with similar equipment in the future. If the equipment can be periodically updated and remain functional, enter N.	N
Useful Life of Capital Equipment Specify the number of servicable years for the equipment being installed.	0
One-Time, Nondepreciable Expenditure:	
Estimated Cost	$2,000,000
Cost Estimate Date	3/1/2012
Cost Index for Inflation	CCI
Tax Deductible? If the expenditure is a deductible business expense under IRS rules, enter Y, otherwise N.	Y
Annually Recurring Costs:	
Estimated Annual Cost	$0
Cost Estimate Date	3/1/2012
Cost Index for Inflation	CCI

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Closure Construction (cont.)
BEN Version 4.6.0 Results

City of Sacramento and Sylvia Dellar Survivor's Trust Dellar Landfill	Closure Construction
Present Values as of Noncompliance Date (NCD),	10/30/2010
A) On-Time Capital & One-Time Costs	$1,160,590
B) Delay Capital & One-Time Costs	$1,040,332
C) Avoided Annually Recurring Costs	$0
D) Initial Economic Benefit (A-B+C)	$120,258
E) Final Econ. Ben. at Penalty Payment Date,	
4/9/2012	**$132,957**
For-Profit (not C-Corp.) w/ CA tax rates	
Average Discount/Compound Rate	7.2%
Average Discount/Compound Rate Calculated By:	BEN
Compliance Date	10/30/2012
Capital Investment:	
Estimated Cost of Capital Equipment	$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Consider Future Replacement (Useful Life)	N/A (N/A)
One-Time, Nondepreciable Expenditure:	
Estimated Cost	$2,000,000
Cost Estimate Date	3/1/2012
Cost Index for Inflation	CCI
Tax Deductible?	Y
Annually Recurring Costs:	
Estimated Annual Cost	$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A

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Closure Certification Report

BEN Version 4.6.0 Input Data

Case Name	City of Sacramento and Sylvia Dellar Survivor's Trust Dellar Landfill
Run Name	Closure Certification Report
Analyst Name	Gerald Horner
Cal EPA Region/Office	Region 5
Tax Status Federal Facility, which pay no taxes. Enter FF Not-for-Profit, which pays no taxes. Enter: NFP Municipality, which pays no taxes. Enter: muni C corporation. Enter: C Private business entity other than a C corporation. Enter type of business organization.	Trust
State	CA
Noncompliance Date (NCD) The date of the first violation.	12/15/2010
Compliance Date (CD) The date that the equipment will be functional and the discharger will be in	10/30/2012
Penalty Payment Date (PPD) The probable date the penalty will be paid.	4/9/2012
Average Discount/Compound Rate Reflects the average cost of borrowing funds over the period of analysis which is the date of noncompliance to the date of compliance or the penality payment date whichever is later.	7.2%
Capital Investment:	
Estimated Cost of Capital Equipment	
Cost Estimate Date The date the cost estimate was made. The date is used to deflate or inflate (price adjust) the cost to other dates.	3/1/2012
Cost Index for Inflation Alternative indices can be used to reflect the change in the cost of compliance due to inflation. Alternative cost indicies: Construction Cost (CCI); Employment Cost (EDI); Plant Cost (PCI); Producers Price (PPI); and Gross Domestic Product (GDP). A constant 2.5% inflation rate can also be specified (enter as text '2.5%).	CCI
Consider Future Replacement Enter Y if the capital improvement will depreciate and it will be replaced with similar equipment in the future. If the equipment can be periodically updated and remain functional, enter N.	N
Useful Life of Capital Equipment Specify the number of servicable years for the equipment being installed.	0
One-Time, Nondepreciable Expenditure:	
Estimated Cost	$15,000
Cost Estimate Date	3/1/2012
Cost Index for Inflation	ECI
Tax Deductible? If the expenditure is a deductible business expense under IRS rules, enter Y, otherwise N.	Y
Annually Recurring Costs:	
Estimated Annual Cost	$0
Cost Estimate Date	3/1/2012
Cost Index for Inflation	CCI

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Closure Certification Report (Cont.)
BEN Version 4.6.0 Results

City of Sacramento and Sylvia Dellar Survivor's Trust Dellar Landfill	Closure Certification Report
Present Values as of Noncompliance Date (NCD),	12/15/2010
A) On-Time Capital & One-Time Costs	$8,736
B) Delay Capital & One-Time Costs	$7,871
C) Avoided Annually Recurring Costs	$0
D) Initial Economic Benefit (A-B+C)	$865
E) Final Econ. Ben. at Penalty Payment Date, 4/9/2012	$948
For-Profit (not C-Corp.) w/ CA tax rates	
Average Discount/Compound Rate	7.2%
Average Discount/Compound Rate Calculated By:	BEN
Compliance Date	10/30/2012
Capital Investment:	
Estimated Cost of Capital Equipment	$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Consider Future Replacement (Useful Life)	N/A (N/A)
One-Time, Nondepreciable Expenditure:	
Estimated Cost	$15,000
Cost Estimate Date	3/1/2012
Cost Index for Inflation	ECI
Tax Deductible?	Y
Annually Recurring Costs:	
Estimated Annual Cost	$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A

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